

United States
Circuit Court of Appeals
For the Ninth Circuit

*In the matter of application of Lui Hip Chin, an
alien, for a Writ of Habeas Corpus.*

EX PARTE LUI HIP CHIN, Appellant.

Brief of Appellant

*Upon Appeal from the United States District Court
for the District of Idaho, Southern Division.*

P. E. CAVANEY, Boise, Idaho,
Attorney for Appellant.

J. L. McCLEAR,

U. S. District Attorney, Boise, Idaho,
Attorney for the Department of Labor.

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This is an appeal from a decision of the District Court of the United States for the District of Idaho, Southern Division, sustaining an order of deportation of appellant, Lui Hip Chin, made by the Department of Labor of the United States after a summary hearing was had by direction of Lorenzo T. Plummer, U. S. immigrant and Chinese inspector in charge of Helena Division, before Thomas Topping, immigrant inspector, on January 19, 1916, on the charge that appellant had been found within the United States in violation of Section 6, Chinese Exclusion

Act of May 5, 1892, as amended by the Act of November 3, 1893, being a Chinese laborer not in possession of a certificate of residence; and that appellant was found within the United States in violation of Section 6, Chinese Exclusion Act of July 5, 1884, having secured admission on a certificate issued under said section but having become a laborer since admission.

Government's Exhibit "B" (page 16, transcript), the same being Certificate of Identity, card No. 20794, was duly and regularly issued to said alien by the immigration officials in charge at the Port of San Francisco, California, and by reason thereof said alien was admitted as a Section 6 Canton Merchant, No. 14662, 4-8 S.S. "Siberia," September 13, 1915. On December 4, 1915, the alien was found by Inspector Topping at Mountain Home, Idaho, in the New York Restaurant, which is owned by a Chinaman by the name of Lum Wah, at which time and place an ex parte statement was taken from the alien which was later introduced in evidence at the hearing and being Government's Exhibit "A" (page 14, transcript). At the same time Government's Exhibits "C," "D," "E," "F" and "G" were taken by the said immigrant inspector from certain other persons, which were also introduced in evidence at the summary hearing.

Lui Hip Chin left Mountain Home shortly thereafter and came to Boise, Idaho, where he was arrested by Inspector Topping on Departmental Warrant, alien's Exhibit "A" (page 32, transcript). The sum-

mary hearing was had on January 19, 1916, before Immigrant Inspector Topping. After the hearing was had and the record was duly and regularly transmitted to the Department of Labor, Bureau of Immigration, Washington, D. C., on March 21, 1916, the Assistant Secretary of Labor found that the alien was in the United States in violation of law and ordered him to be taken into custody and conveyed to Seattle, Washington, for deportation. On the same date the Commissioner of Immigration at Seattle, Washington, was ordered to deport Lui Hip Chin to China, the country from whence he came. The alien sued out a writ of habeas corpus to the District Court of the United States for the District of Idaho, Southern Division. On the 15th day of April, 1916, J. L. McClear, United States Attorney for the District of Idaho filed a demurrer to the petition upon the ground that the petition did not state facts sufficient on which to grant the writ (page 12, transcript). A hearing was had upon the said demurrer and the Court rendered a memorandum decision on May 1, 1916, sustaining the decision of the Department of Labor, and denied the writ (page 36, transcript). On July 1, 1916, a motion for a rehearing was duly and regularly made by appellant herein (page 39, transcript), and on July 3, 1916, a rehearing was denied (page 41, transcript). This appeal is from the decision of the Court.

Appellant maintains and contends that the said Court committed error herein as more particularly herein set out, to-wit:

ASSIGNMENTS OF ERROR.

I.

That said memorandum decision is erroneous wherein it is held that your petitioner had a fair and impartial hearing before the said Department of Labor of the United States as contemplated by law and the rules and regulations of the said department.

II.

That said memorandum decision is erroneous wherein it held that the said Chinese Immigrant Inspector who conducted the said hearing herein did not abuse the discretion imposed in him by law and the rules and regulations of the Department of Labor of the United States at said hearing.

III.

That said memorandum decision is erroneous wherein it held that said Chinese Immigrant Inspector who conducted the hearing herein was qualified to administer an oath to the witnesses at the hearing in said cause.

IV.

That said memorandum decision is erroneous wherein it held that your petitioner had waived his right in the court to object to certain irrelevant and incompetent testimony which was introduced upon the summary hearing in said cause before the said Chinese Immigrant Inspector because the record in said cause did not show that your petitioner objected to said testimony when the same was offered.

V.

That said memorandum decision is erroneous wherein it held that the ex parte deposition of said petitioner and certain other persons taken prior to the hearing before the Chinese Immigrant Inspector and not in the presence of the said petitioner, and before said petitioner was advised of the nature of the charge against him, and in the absence of his counsel, were admissable in evidence against the said petitioner in said proceeding.

VI.

That said memorandum decision is erroneous wherein it held that said petitioner had an opportunity to cross examine all of the parties who made ex parte statements in said cause.

VII.

That said memorandum decision is erroneous wherein it held that counsel for petitioner in said proceeding had embraced the opportunity of cross examining all said deponents.

VIII.

That said memorandum decision is erroneous wherein it held that there was substantial evidence adduced at said hearing to support the findings of the Department of Labor of the United States.

IX.

That said memorandum decision is erroneous wherein it held that your petitioner was a laborer as contemplated by law and the rules and regula-

tions of the Department of Labor of the United States.

X.

That said memorandum decision is erroneous wherein it held that said Chinese Immigrant Inspector did not abuse his discretion in prohibiting counsel for petitioner from cross examining a certain witness, John W. Jayne, produced on the part of the Department of Labor of the United States.

XI.

That said memorandum decision is erroneous wherein it held that said petitioner and other witnesses produced by your petitioner at said hearing swore falsely.

XII.

That said memorandum decision is erroneous wherein the Court passed on the weight of the evidence in said hearing.

XIII.

That said memorandum decision is erroneous wherein it held that the claim of the petitioner to engage in a mercantile business in the United States was pretentious and not bona fide.

XIV.

Said Court should have held that when your petitioner testified that he had \$1000.00 and was issued a merchant's certificate when he landed in the United States, that the burden was then shifted to the Government to overcome the prima facie showing of his right to remain in the United States as a merchant.

XV.

The Court was in error in commenting upon the weight of the evidence or any presumptions arising therefrom.

XVI.

The Court was in error in holding that there was a preponderance of the evidence to support the findings upon which the warrant of deportation was based.

XVII.

The said Court should have held that said alien was arrested and ordered deported from the United States without due process of law.

XVIII.

Said Court should have held that said warrant of arrest was issued against your said petitioner without due authority of law.

XIX.

Said Court should have held that said Department of Labor of the United States had no authority whatever or at all to issue said warrant of arrest or deportation, or to hear said cause.

XX.

Said Court should have held that said warrant of deportation in said cause was defective and void for the reason that said warrant did not direct that the said Lui Hip Chin be deported to the port in China from which he embarked, or to the port nearest to the place where said alien was born.

XXI.

Said Court should have held that said hearing and proceeding in the deportation of said alien was contrary to law and in violation of the Chinese Exclusion Laws of the United States and the rules and regulations relating thereto.

XXII.

Said Court should have held that said Immigration Act of February 20, 1907, as amended by the Acts of March 26, 1910, and March 4, 1913, had no application to the deportation of Chinese persons in the United States in violation of Section 6 of the Act of May 5, 1892, as amended by the Act of November 3, 1893, or Section 6 of the Chinese Exclusion Act of July 5, 1884.

XXIII.

Said Court should have held that there was no legal evidence taken at said hearing of said cause to justify the deportation of said alien.

XXIV.

Said Court should have held that there was no evidence to show that the said Lui Hip Chin was a Chinese person.

XXV.

Said Court should have granted the writ of habeas corpus.

POINTS AND AUTHORITIES.

I.

Appellant was not accorded a fair and impartial hearing.

Ong Chew Lung v. Burnett, Im. Insp., 232 Fed. (C. C. A.) 853.

U. S. v. Fong Hong, 233 Fed. (D. C.) 168.

U. S. v. Fong Duck, 172 Fed. 856, 97 C. C. A. 204.

Lin Hop Fong v. U. S., 209 U. S. 453, 52 L. Ed. 888.

McDonald v. Sin Tak Sam, 225 Fed. 710, 140 C. C. A. 584.

Whitfield v. Hanges, 222 Fed. 745, 138 C. C. A. 199.

Ex Parte Lam Pui, 217 Fed. 456.

Re Yee Bing Hi, 128 Fed. 319.

Joras v. Allen, 138 C. C. A. 211.

Ex Parte Chin Loy You, 223 Fed. 833.

II.

The Immigrant Inspector abused the discretion imposed in him by the Immigration Act and the rules and regulations of the Department of Labor of the United States.

Low Wah Suey v. Backus, 225 U. S. 460, 56 L. Ed. 1165.

Japanese Immigrant Case, 189 U. S. 86, 47 L. Ed. 721.

. Ex Parte Bun Chew, 220 Fed. 387.

Ex Parte Chin Loy You, *supra*.

III.

The Immigrant Inspector was not qualified to administer an oath to witnesses in said case.

Whitfield v. Hanges, *supra*.

Hanges v. Whitfield, 209 Fed. 675.

McDonald, Immigration Inspector, v. Sin Tak Sam, *supra*.

IV.

Appellant did not waive his right to object to irrelevant, incompetent testimony offered at the summary hearing. See (b) sub-division 4, Rule 22, Immigration Rules, November 15, 1911.

Lin Hop Fong v. U. S., *supra*.

Ex Parte Lam Pui, *supra*.

There must be substantial evidence to support deportation.

Woo Jew Dip v. U. S., 192 Fed. 471.

V.

Ex parte statements which appellant was not given an opportunity to refute are inadmissible in evidence against him.

McDonald v. Sin Tak Sam, *supra*.

Hanges v. Whitfield, *supra*.

VI and VII.

Appellant was not afforded an opportunity to cross examine all the parties who made ex parte statements against him.

McDonald v. Sin Tak Sam, *supra*.

Hanges v. Whitfield, *supra*.

See transcript, page 15, Government's Exhibit "A."

See transcript, page 16, Government's Exhibit "C."

See transcript, page 23, Government's Exhibit "G."

VIII.

There was no substantial evidence introduced at said hearing to support the deportation.

Woo Jew Dip v. U. S., *supra*.

In re Jew Wong Lay, 91 Fed. 471.

U. S. Lee Huen, 118 Fed. 19.

The evidence should be carefully weighed and considered.

Lim Som v. U. S. 189 Fed. 534.

2 C. J. 1103.

IX.

Appellant was not a laborer. A Chinese laborer is one who has to work at common labor to gain a livelihood.

U. S. v. Chong Ki Foon, 83 Fed. 143.

Camp Bird v. Larson, 152 Fed. 157.

2 C. J. 1093.

Appellant was a Chinese merchant.

Ong Chew Lung v. Burnett, *supra*.

U. S. v. Ching Chong Pong, 192 Fed. 722.

U. S. v. Wing Lee, 136 Fed. 701.

U. S. v. Fong Hong, 233 Fed. 168.

Lin Hop Fong v. U. S., 290 U. S. 453.

The burden of proof shifted to the Government when Lui Hip Chin produced his certificate of identity, Exhibit "B," which must be overcome by proof clear and convincing.

Jew Sing v. U. S., 97 Fed. 582.

The proof should be clear and convincing, and until the Government has made out such a case, the holder of the certificate is not required to invoke further proof.

Jew Sing v. U. S., *supra*.

U. S. v. Hon Lim, 214 Fed. 456.

2 C. J. 1102.

Uncontradicted evidence, free from improbability, when given by disinterested witnesses in no way discredited, is conclusive.

U. S. v. Lee Huen, *supra*.

In Quock Ting v. U. S., 140 U. S. 417.

2 C. J. 1103.

Evidence of a Chinaman should not be discredited.

U. S. v. Hong Lim, *supra*.

Wong Ho v. U. S., 109 Fed. 888.

2 C. J. 1104.

There must be legal evidence to overcome merchant's certificate.

Lin Hop Fong v. U. S., 290 U. S. 453.

Ong Chew Lung v. Burnett, *supra*.

X.

Immigrant Inspector abused the discretion imposed in him by refusing counsel for appellant to cross examine Government's witness, Jayne. See transcript, page 26.

Authorities cited under assignment No. 2, *supra*.

Before an alien admitted to the United States as a member of the exempt class can be deported, it must be shown by evidence, not merely suspicious circumstance or conjecture, that he has obtained such admission by means of fraudulent representations.

Ex Parte Lam Pui, *supra*.

Ex Parte Lam Fuk Tak, 217 Fed. 468.

McDonald v. Sin Tak Sam, *supra*.

U. S. v. Fong Hong, *supra*.

XI, XII and XIII.

The Court cannot weigh the evidence in such cases.

Wong Yee Foon v. Stump, 233 Fed. 194.

Or pass on the credibility of the witnesses.

Gegiow v. U. S., 239 U. S. 2.

Harlan v. McGourin, 218 U. S. 445, 54 L. Ed. 1101.

Ex Parte Hindekuni Iwata, 219 Fed. 610.

Hanges v. Whitfield, *supra*.

Chin You v. U. S., 208 U. S. 8, 58 L. Ed. 369.

White v. Gregory, 213 Fed. 768.

Lewis v. Frick, 233 U. S. 291, 58 L. Ed. 967.

XIV.

The introduction in evidence of appellant's Exhibit "B" made out a *prima facie* case in favor of the alien and established his right to remain in the United States.

Ong Chew Lung v. Burnett, *supra*.

U. S. v. Tong Sen, 205 Fed. 398.

U. S. v. Fong Hong, *supra*.

Lin Hop Fong v. U. S., *supra*.

U. S. v. Chin Chong Pong, 192 Fed. 722.

XV and XVI.

The Court should not have commented on the evidence.

White v. Gregory, *supra*.

XVII, XVIII, XIX, XXI and XXII.

Appellant was arrested and ordered deported without due process of law.

Ex Parte Woo Jan, 228 Fed. 927.

Ex Parte Chin Loy You, *supra*.

Ex Parte Tom Yuen, 230 Fed. 656.

U. S. ex rel. Lem Him v. Prentis et al., 230 Fed. 935.

Lin Hop Fong v. U. S., *supra*.

U. S. v. Fong Hong, *supra*.

XX.

Appellant should have been ordered deported to his place of residence in China.

Ex Parte Gytel et al., 210 Fed. 918.

U. S. ex rel. N. G. Sam et al. v. Redfern, 210 Fed. 548.

XXIII.

There was no legal evidence to justify deportation.

N. Jin Quan v. U. S., 210 Fed. 617.

XXIV.

The burden of proof was on the Government to

show that appellant was a Chinese person, which it failed to do.

U. S. v. Chin Sing Quong, 224 Fed. 752.

U. S. v. Ching Chong Pong, *supra*.

XXV.

The Court should have granted the writ and discharged appellant.

Authorities cited *supra*, one to twenty-four inclusive.

ARGUMENT.

Appellant maintains that the summary hearing accorded him herein by the Immigrant Inspector was arbitrary and unfair and not according to law and the rules and regulations of the Department of Labor of the United States. It is conceded by the Government in this case that Lui Hip Chin entered the United States as a Canton merchant upon the proper credentials, as shown by the certificate of identity which was issued to him at San Francisco, California, on the 20th day of September, 1915 (page 16, transcript), also the testimony of Lui Hip Chin (pages 23 to 25 inclusive, transcript). Lui Hip Chin having been admitted by the immigration authorities to enter the United States as a Chinese merchant, he came under Article 2 of the Treaty of the Chinese Empire with the United States, which provides, among other things: "Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or for curiosity, etc., * * * * * shall

be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities and exemptions which are accorded to citizens and subjects of the most favored nation."

According to the testimony in this case, Lui Hip Chin exhibited to the immigration authorities upon entering the United States, a draft drawn by a Canton bank on a bank in San Francisco, California, for the sum of \$1000.00. According to his own testimony, he landed at San Francisco and stayed there about two months, and came to Mountain Home, Idaho, about two months before his arrest. (Pages 14 and 23 to 25 inclusive, transcript.)

Alien claims that he came to the United States to look up business opportunities and that while at Mountain Home he helped his friend, Lum Wah, of the New York Restaurant at Mountain Home, and he was merely staying at the New York Restaurant as any other person would stay there. He came to Mountain Home to look up business opportunities and also to visit his brother, Lui Mon, who lived there. There is nothing in the evidence to show that the status of Lui Hip Chin had changed or that he was compelled to perform manual labor for his livelihood. The mere fact that he occasionally assisted in removing dirty dishes from the tables of Lum Wah's restaurant at Mountain Home was not sufficient to show that he was not a merchant.

In the case of *Ong Chew Lung v. Burnett, Im. Insp.*, 232 Fed. 853, at page 855 the Court said:

“Before appellant can be lawfully deported, it must be shown by competent evidence that he obtained admission by fraudulent representations.”

Further, in *Lin Hop Fong v. U. S.*, 209 U. S. 453, 52 L. Ed. 888, the Supreme Court said that the certificate “certainly ought to be entitled to some weight,” and held that a Chinaman having been duly admitted to residence thereunder could not be deported “unless there is some competent evidence to overcome the legal effect of the certificate.”

“It is not our function to weigh the evidence in this class of cases; but we may consider the question of law, whether there was evidence to sustain the conclusion that the appellant, when he first came, fraudulently entered the United States. We find that that conclusion rests upon conjecture and suspicion and not upon evidence. In the absence of substantial evidence to sustain the same, an order of deportation is arbitrary and unfair and subject to judicial review.”

In the case of *U. S. v. Fong Hong*, 233 Fed. 168, at page 169 the Court said:

“The defendant’s admission to this country under a merchant’s certificate admittedly in due form, placed him in the exempt class, and he cannot be deported for having fraudulently entered the United States unless there is some competent evidence to overcome the legal effect of the certificate.”

Citing *Lin Hop Fong v. U. S.* supra, at page 170 the Court further said:

“It is to be noted further that Chinese subjects of the exempt class (merchants, etc.), when admitted to this country, are to be accorded all the rights, privileges, immunities and exemptions

which are accorded to citizens and subjects of the most favored nation. Under this treaty, a Chinese subject of the exempt class, regularly admitted to this country, must be held to have obtained a status the same as is obtained by an immigrant from the most favored nation. This being so, it follows that such status continues with him, so far as his right to remain in this country is concerned, notwithstanding that he may subsequently to his admission, whether through choice or necessity, become a laborer. This conclusion accords with that reached by Judge Lowell in *re Yew Bing Hi*, 128 Fed. 319."

By Government's Exhibit "B," alien's certificate of identity, alien was admitted as a Section 6 Canton Merchant No. 14662, and this established his status as a member of the exempt class, and therefore he cannot be deported unless the Government has established by sufficient evidence that he fraudulently entered the United States. There is not one scintilla of evidence in this record to show fraud in the entry of this alien, and the record further fails to disclose that said alien had done anything which would change his status from that of a merchant. If the Government was relying upon the grounds of fraud in this case, it seems quite apparent that they absolutely failed to establish it. The summary hearing which was accorded to appellant herein was not fair as contemplated by law and the rules and regulations of the Department of Labor for the reason that all of the ex parte statements which were used in this case, with the exception of Government's Exhibit "A," were taken from the respective parties by the Immigrant Inspector not in the presence of the alien

or in the presence of his counsel or even when he had an opportunity to procure counsel, and also without informing him of the nature of the charge for which he was called to answer. It appears that this contention is sustained by the weight of authority, that in this class of cases the alien should be permitted to have counsel at all stages of the hearing, and that he should be advised of the nature of the charge which he is to meet before any statement is taken from him or from any other person that would materially affect his rights. If this is not permitted, the Immigrant Officer will abuse the discretion which is imposed in him by the Immigration Law. It is unfair to take a statement from an alien who is not accustomed to the ways of our country and its customs without disclosing to him the nature of the charge for which he is being examined. This is a fundamental principal of procedure accorded to every person in the Anglo Saxon countries. This alien is not a criminal, nor has he committed any heinous offense, nor is he charged with having committed any offense. Therefore, as a matter of courtesy and right which is accorded to him under the treaty which his country has with the United States, he should be given every opportunity to protect his rights. This record will disclose that the Government's Exhibits "C," page 16, transcript; Government's Exhibit "D," page 19, transcript; Government's Exhibit "E," page 20, transcript; Government's Exhibit "F," page 21, transcript, and Government's Exhibit "G," page 23, transcript, were all ex

parte statements taken not in the presence of alien nor his counsel and taken long prior to the time when the case was set for hearing, and Government's Exhibit "C" and Government's Exhibit "G" were introduced in evidence and counsel for alien was not accorded the privilege or opportunity of cross examining said witnesses on said statements. All of the above exhibits were introduced in evidence over the objection of counsel for alien. The record does not disclose, however, the objections made because it was understood between the examining officer and counsel for alien that in conformity with Subdivision 4, Rule 22 of Immigration Laws and Rules, November 15, 1911, all objections were to be raised in the briefs and argument.

The summary hearing was not fair for the further reason that Inspector Thomas Topping had no power to administer oaths or to swear witnesses at said hearing, as was held in the case of *Whitfield v. Hanges*, supra. Also, Inspector Topping attempted to testify in said case without having been sworn as a witness. (Page 14, transcript, at bottom of page.)

Question (by Topping): I found him washing dishes this morning in the New York Cafe.

On page 15 of the transcript, a notation by the Inspector is as follows: "Note: The hands of Lui Hip Chin show very distinctly that he has been wash-in dishes for some time."

This action on the part of the Inspector was unfair and unjust to alien for the further reason and upon the ground that the said Inspector had not qualified

as a witness competent to testify on matters of this kind, and was purely speculative and prejudicial.

On page 26 of transcript, counsel for appellant was prohibited from cross examining the witness, John W. Jayne, by Inspector Topping when counsel for appellant was attempting to show that John W. Jayne was prejudiced against Lui Hip Chin, Lum Wah and other Chinese persons at Mountain Home. This privilege should have been granted to counsel to show what interest or prejudicial feeling the witness may have toward the alien in order to determine whether or not he was testifying truthfully and honestly. I think the testimony of John W. Jayne, page 25 transcript and page 29 transcript, shows him to be a person who would not likely tell the truth in an investigation of this kind.

The evidence further discloses that Lui Mon was running a tailor shop in Mountain Home in competition with Government's witness, J. F. Bertram, and that he undoubtedly would be glad to cause the Chinaman as much trouble as possible.

The evidence further discloses that at the time of the hearing Lui Mon was not available for cross examination by the alien, nor was H. L. Grebe available for cross examination.

Government's Exhibit "C," page 16 transcript, shows that Lui Mon did not have his certificate of residence and undoubtedly he evaded the officers and could not be found on the day of the hearing on account of being afraid that he might also be deported for not having his certificate of residence.

The evidence further discloses that John W. Jayne was extremely anxious to assist in the capture and deportation of this alien, as the record will disclose he assisted Inspector Topping in locating the alien in Mountain Home, Jayne coming in the back door of the restaurant while Topping went in the front door. (Pages 26 and 27, transcript.)

The hearing was also unfair and did not afford the alien an opportunity to be present when the witnesses were examined for the reason and upon the grounds that at the hearing the Inspector did not have the alien present but that he was identified by means of a photograph, and the evidence does not disclose that the particular photograph in question was in truth and in fact a true and correct photograph of Lui Hip Chin. The Inspector tried to show that the alien had left Mountain Home for the purpose of evading arrest, and that he came to Boise, Idaho. However, the alien explains this, that he came to Boise not to evade arrest, but to look up business opportunities, which is perfectly consistent with his former statements and his purpose in this country.

Counsel for alien contends further that alien could not be deported under the Immigration Act of February 20, 1907, as amended by the Act of March 26, 1910, and March 4, 1913; because of the alien being in the United States in violation of Section 6 of the Act of May 5, 1892, as amended by the Act of November 3, 1893, or Section 6 of the Chinese Exclusion Act of July 5, 1884, for the reason and upon the grounds that the immigration authorities, under this

Act, have no authority to deport a Chinese laborer or merchant, and the only way they can be deported is under the Chinese Exclusion Act, which contention has been ably presented by Judge Cochran in the case of *Ex Parte Woo Jan*, 228 Fed. 927, and sustained in subsequent cases, cited *supra*.

The evidence in this case does not disclose that Lui Hip Chin ever at any time during the time that he was in the United States, performed any manual labor for his self support or livelihood, or that he was compelled to perform such labor, but that he occasionally assisted Lum Wah, merely as a friend, to remove some dirty dishes from the table of the restaurant during the time that he was there. It cannot be conceived of how this kind of labor would place this alien in the class of a laborer. It has been uniformly held by all of the Courts that if the alien duly and regularly entered the United States as a merchant, the fact that he performed manual labor of the kind that Lui Hip Chin performed in this instance, he would not be subject to deportation as coming within the class of persons excluded from the United States. This man's appearance, his conduct, his dress and manners show him to be a Chinese person of considerable education and refinement, and he has every appearance of being a merchant and being a person who would not be a charge upon this country or cause this country any trouble of any kind.

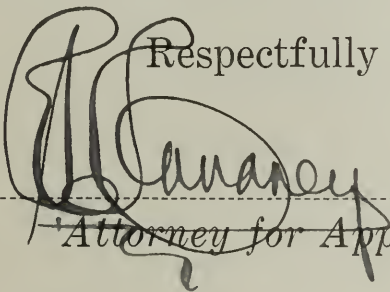
The Government has failed absolutely to establish a case and the evidence falls far short of showing

that Lui Hip Chin fraudulently entered the United States or that he became a laborer after entering the United States. The Government used every effort possible to obtain evidence in this case and it was within the power of the Government to ascertain whether or not the statements made by the alien were true or untrue, but the fact that they have failed to establish these facts and have permitted the record to stand as it now stands is conclusive of the fact that they could not refute his statements, and his statements and the statements of other witnesses on his behalf are the truth and are entitled to be considered in the hearing of this case the same as the testimony of any other witnesses. The mere fact that a Chinaman testifies in a case should not be conclusive or even presumptive that he is not telling the truth. A Chinaman's testimony, when under oath, should be accorded the same sanctity as is accorded to any other person, and their statements should be taken as true until the contrary is established by legal evidence. This is a fundamental principle which lies at the bottom of all institutions of the Anglo Saxon race, and there can be no reason why the Government should depart from this principle in cases of this kind, and especially where a Chinese merchant is attempted to be expelled from this country. There is a vast distinction in the class of cases between a person who violates the intent of the Immigration Act and cases of this kind. The Immigration Act in itself makes particular things an offense and makes the perpetrator thereof, in a sense,

guilty of a crime, and provides for a summary hearing, and, if the charges are proven, the alien is expelled as being an undesirable citizen. I do not believe that this class of cases should come within the same category and the same rules should be applicable here even though the Court should find that the immigration authorities can expel an alien who is in this country in violation of the Chinese Exclusion Act, as is being attempted to be done in this case. A Chinese merchant, under the treaty, is a privileged person and should be accorded the same rights and privileges and immunities as is accorded an alien of the most favored nation. It cannot be said that we have accorded an alien merchant this right if we summarily deport him on rumor, hearsay and trumped-up charges.

We respectfully submit in this case that there is no evidence here to show that this alien was in the United States in violation of Section 6 of the Chinese Exclusion Act, or that he became a laborer since his admission to the United States, and that the Court should discharge the alien.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "R. C. Quance". The signature is written in a cursive, flowing style. It is positioned above a horizontal dashed line.

Attorney for Appellant Lui Hip Chin;

Boise, Idaho.

